THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. SUPERIOR COURT
NORTHERN DISTRICT

NO. 00-M-815

LISA A. HOLMES

V.

RALPH F. HOLMES

OPINION AND ORDER

LYNN, J.

The issues presently before the court in this divorce action arise out of plaintiff's efforts to discharge her counsel and to substitute a non-lawyer, Theodore Kamasinski, as her "attorney-in-fact." Based largely, although not entirely, upon Mr. Kamasinski's appearance, plaintiff has moved to recuse the undersigned justice from continuing to preside over the case. The defendant objects to the recusal motion and seeks to bar Kamasinski's appearance on the grounds that he is engaged in the unauthorized practice of law. Also before the court are a motion to withdraw and a motion for instructions filed by plaintiff's present counsel, Attorney Donald Kennedy, and a petition for access to court records filed by Mr. Kamasinski in his capacity as a private citizen. After reciting the pertinent facts, I address these various motions below.

I.

The instant divorce action was commenced by the plaintiff by

the filing of a libel in this court on or about May 26, 2000. Pursuant to the individual docket system in effect in the Northern District of Hillsborough County, the case was randomly assigned to me. I have presided over the case from its inception, and have issued a number of orders ruling on various pretrial motions. I also presided over a related domestic violence petition filed by the plaintiff against the defendant, docket #00-M-1345, and issued a decision on the merits finding that the defendant had not abused the plaintiff.

This case is presently scheduled for trial on October 31-November 1, 2001. Since the inception of the case, plaintiff has been represented by Attorney Kennedy. On July 9, 2001, Kennedy filed a motion to continue the trial, which at that time was scheduled for September 5-6, 2001. The basis of the motion was Kennedy's assertion that plaintiff was dissatisfied with his representation and desired to obtain new counsel. Defendant objected to the motion to continue, and I denied the motion on July 11, 2001. Thereafter, at a discovery hearing held on August 22, 2001, it was brought to my attention that the September 5-6 trial date was during a period when I was scheduled to be on vacation.[1] Accordingly, after conferring with counsel, the clerk rescheduled the case for trial on October 31-November 1.

[1] The clerk's office inadvertently scheduled the case for trial during a week when I had previously informed the clerk I would be on vacation, but until the August 22 hearing, I was not aware of the conflict.

On September 12, 2001, Theodore Kamasinski, a lay person not licensed to practice law in this state, entered an appearance for the plaintiff and filed with the court a power of attorney in which plaintiff appointed Mr. Kamasinski to act as her attorney in fact in this case. On September 14, 2001, Attorney Kennedy filed a motion to withdraw as plaintiff's counsel. At the time he entered his appearance, Mr. Kamasinski informed the clerk's office that I had his name on my "recusal list" and that the case would have to be assigned to another judge.[2] On September 24, 2001, defendant filed an objection to Attorney Kennedy's motion to withdraw and to the allowance of Mr. Kamasinski's appearance as attorney in fact for plaintiff. I held a hearing on these matters on October 4, 2001.

At the outset of the hearing, Mr. Kamasinski presented a formal motion asking that I recuse myself from any further involvement in this case. The written motion asserted, in essence, three grounds for recusal. The first was based on the fact that in 1995 Mr. Kamasinski had filed two complaints against me with the Judicial Conduct Committee(JCC). The second was based on the claim that I had demonstrated prejudice against the plaintiff by some of the rulings I have made thus far in this case. The third was the allegation that my "personal experiences

[2] Although each judge normally does provide the clerk with a listing of lawyers from whose cases they are recused, Mr. Kamasinski was not on my list because he is not a lawyer and I had no reason to expect that he might try to represent someone in a case assigned to me.

involving [my] former wife and one of [my] children" require that I be precluded from sitting "on any marital dissolution cases involving young children." In addition, during the hearing, Kamasinski orally offered a fourth basis for recusal: that I could reasonably be perceived as biased against him because of his role in the "downfall" of former New Hampshire Supreme Court Justice W. Stephen Thayer, III.

II.

The New Hampshire Constitution establishes "the right of every citizen to be tried by judges as impartial as the lot of humanity will admit." N.H. Const., pt. I, art. 35. To implement this constitutional right, Canon 3C of the Code of Judicial Conduct, Supreme Court Rule 38, provides:

> (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:
>
> (a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. . . .

The standard which a judge must apply in evaluating a recusal motion is an objective one, "i.e., would a reasonable person, not the judge himself, question the impartiality of the court." Blaisdell v. City of Rochester, 135 N.H. 589, 593 (1992). Accord. Taylor-Boren v. Isaac, 143 N.H. 261, 268 (1998) (quoting J. Shaman et al., Judicial Conduct and Ethics 4.15, at 125-26 (2d ed. 1995)("The test for the appearance of partiality . . . is[] whether an objective, disinterested observer, fully informed of

the facts, would entertain significant doubt that justice would be done in the case.")). "The objective standard is required in the interests of ensuring justice in the individual case and maintaining public confidence in the integrity of the judicial process which depends on a belief in the impersonality of judicial decision making." Scott v. United States, 559 A.2d 745, 749 (D.C. App. 1989). See also Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1987) ("We must continuously bear in mind that to perform its high function in the best way justice must satisfy the appearance of justice.").

Applying the above standard, I consider in turn each of the four grounds for recusal advanced by the plaintiff. For purposes of simplicity, I address initially those grounds that are not based upon an alleged conflict between myself and Mr. Kamasinski.

First, plaintiff argues that I have exhibited bias against her by virtue of my rulings in this case. Specifically, she points to my order of July 11, 2001, denying her motion for a continuance. On the contrary, an objective examination of the record demonstrates that the denial of the continuance was entirely justified in light of the facts that (1) this case had then been pending for over one year (the libel was filed on May 26, 2000), (2) the court had previously continued the case twice, once at the request of the plaintiff (and over the objection of the defendant) and a second time by agreement of the parties, and

(3) the defendant vigorously objected to any further continuance.[3] Plaintiff also sees bias in the fact that, despite the disparity in the parties' incomes, my temporary order in this case awarded her alimony for a period of only three months. What plaintiff fails to mention, however, is that the temporary order also requires the defendant to pay child support based on the full amount calculated by application of the child support guidelines. The defendant agreed to pay support in the full guidelines amount notwithstanding the fact that the temporary order awards the parties shared physical custody of the children. Given such a shared custodial arrangement (in which the children spend approximately equal time with each party), the court would normally make a significant reduction in the level of child support payable by the defendant. Since alimony is taxable to the plaintiff (and deductible by the defendant) while child support is not, the "trade off" between these two forms of support, to the extent reflected in the temporary order, actually works to the advantage of the plaintiff. In short, the terms of the temporary order would give an objective observer no basis to question my

[3] As noted previously, it was at the hearing on August 22, 2001, that I first realized and notified the parties that the scheduled September 5-6 trial date conflicted with my vacation, and that a continuance would be required. Despite learning at that time that a continuance would be required in any event because of my unavailability, plaintiff did not then seek to revisit the issue of whether her counsel should be permitted to withdraw. Had she done so, I might well have agreed to reschedule the trial sufficiently far in advance to permit plaintiff to obtain new counsel.

impartiality. In any event, it is well-established that disagreements with a judge's rulings do not constitute a proper basis for seeking recusal. See, e.g., Securacomm Consulting, Inc. v. Securacomm, Inc., 224 F.3d 273, 278 (3d Cir. 2000) ("We have repeatedly stated that a party's displeasure with legal rulings does not form an adequate basis for recusal."); In re Cooper, 821 F.2d 833, 844 (1st Cir. 1987) (judge's rulings on pretrial motions does not constitute prejudgment of the case requiring recusal).

Plaintiff next argues that I must recuse myself because of "personal problems" I experienced with my former wife, Valerie P. Lynn, and my daughter, Kacey Lynn, during the period 1995-1997. Plaintiff does not specify the nature of these "problems," but asserts that they demonstrate "poor parenting and questionable moral behavior," and would cause a reasonable person to doubt my ability to impartially protect plaintiff's rights and those of her children. Evidence presented at the October 4 hearing provided some minimal elaboration on this theme. There was testimony, for example, suggesting that plaintiff either believed or had been told that I "screwed" my ex-wife in our divorce. The short answer to these vague and conclusory allegations is that they are insufficient as a matter of law to require that I be recused from this case. See Jones v. Pittsburgh Nat. Corp., 899 F.2d 1350, 1355-56 (3d Cir. 1990) (conclusory allegations that judge was corrupt, antagonistic toward Republicans, chauvinistic toward women, and "the product of a failed Presidency of Jimmy Carter," held legally insufficient to state basis for recusal); Griffith v.

Edwards, 493 F.2d 495, 496 (8th Cir. 1974) (in civil rights case, conclusory allegations that trial judge was "an agent of Black Power Groups . . . and movements in the City Jail in St. Louis, " that he "conspires with them to delay actions by members of the White Race," and that he has "great prejudice and interest and bias in seeing that [the] plaintiff's rights . . .are destroyed, covered up and concealed" because plaintiff had brought suit against the judge, afforded no legally sufficient grounds for recusal). There is nothing in the circumstances of my divorce from Valerie Lynn or my relationship with my daughter Kacey which could reasonably lead an objective person to question my ability to fairly adjudicate this case. My divorce from Valerie Lynn became final more than six years ago, in July 1995. Both my ex-wife and I were represented by competent counsel during that proceeding, and the matter was resolved on an uncontested basis. The permanent stipulation incorporated into the divorce decree is a matter of public record; far from demonstrating that anyone was "screwed," it reflects a settlement that, by any reasonable objective measure, would be viewed as fair and equitable to both parties. Furthermore, Kacey Lynn, the youngest child of my marriage to Valerie Lynn, was 18 years old at the time of my divorce; consequently matters regarding custody, parenting, etc., simply were never at issue in that proceeding.

I now address the third and fourth grounds for recusal advanced by plaintiff, both of which arise out of her efforts to involve Mr. Kamasinski in this case. In 1995, Kamasinski filed

two complaints against me with the Judicial Conduct Committee (JCC). The first complaint alleged that I had engaged in certain improper conduct as an Assistant United States Attorney for the District of Connecticut in connection with the prosecution of a case known as United States v. Young & Rubicam, et al, Crim No. 89-68 (D. Conn.).[4] The second complaint alleged that I had provided false information to the JCC in responding to the first complaint. Both complaints were summarily dismissed by the JCC on the grounds, among others, that they were "obviously unfounded."[5] Notwithstanding their lack of merit, plaintiff contends that the mere fact that Kamasinski filed these JCC complaints creates an appearance that I would be biased against him, and thus requires that I recuse myself.

Beyond the JCC complaints, Kamasinski also alleges that,

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[4] See United States v. Young & Rubicam, Inc., 741 F. Supp. 344 (D. Conn. 1990).

[5] Beyond referencing the two baseless JCC complaints, the motion to recuse also states that:

> Justice Lynn should reasonably be aware of the continued investigatory activities by Theodore Kamasinski; (sic) targeting Robert J. Lynn and including detailed searches of public records, FOIA requests and interviews with Federal Officials and citizens who have had close relations with Ms. Valerie Lynn and Kacey Lynn.

Contrary to this assertion, until the filing of the instant motion, I had absolutely no knowledge of any "continued investigatory activities" by Mr. Kamasinski which were allegedly directed against me. And, of course, the claim of a litigant (or his representative) that he is conducting an investigation designed to uncover information to be used in a motion to recuse cannot itself be a basis for recusal.

through his representation of Judith Thayer in her divorce from former Justice Thayer, he is regarded by many members of the public as being responsible for the events which led to Thayer's resignation from the supreme court. Because of my personal and professional association with Justice Thayer over the years,[6] Kamasinski argues that I should recuse myself to avoid the public perception that I would be biased against him for causing Thayer's difficulties.

The case law makes it quite clear that, except in "extreme" and "rare" situations, see Panzardi-Alvarez v. United States, 879 F.2d 975, 984 (1st Cir. 1989), antipathy between the court and counsel generally does not constitute grounds for recusal because it usually is not indicative of bias against the lawyer's client. See Cooper, 821 F.2d at 838-39 (judge's statements that defense counsel had no credibility and "may be a fit candidate for a perjury indictment" did not mandate recusal); In re Beard, 811 F.2d 818, 830 (4th Cir. 1987) (district court's remark that a lawyer was a "wise-ass" and a "son-of-a-bitch" were ill-advised, but did not require disqualification); Gilbert v. City of Little Rock, 722 F.2d 1390, 1398-99 (8th Cir. 1983) (judge who felt required to recuse herself from any cases in which a particular lawyer or his firm were counsel, was not required to recuse

[6] From 1982-1984, I served as First Assistant under Thayer when he was the United States Attorney for the District of New Hampshire. We have remained friends since that time. Through my relationship with Mr. Thayer, I also came to know Judith Thayer.

herself in a case where the lawyer was an expected witness); United States v. Kelley, 712 F.2d 884, 890 (1st Cir. 1983) (recusal of judge from jury-waived criminal trial not required though judge had previously authorized electronic surveillance of defense counsel's phone based on finding of probable cause to believe counsel involved in a conspiracy to obstruct justice); McKinley v. Iowa Dist. Court, 542 N.W.2d 822, 826-27 (Iowa 1996) (recusal not required by judge's display of anger with wife's counsel in contempt hearing for failure to comply with divorce decree); Martin v. Beck, 915 P.2d 898, 899 (Nev. 1996) (supreme court justice's actions in providing information to authorities about lawyer's possible perjury did not require justice's disqualification from hearing appeal in which lawyer represented appellant); State v. Mata, 789 P.2d 1122, 1125-26 (Haw. 1990) (that trial judge had filed misconduct complaint against defendant's lawyer with bar disciplinary authority did not require judge's recusal). There also is substantial authority for the proposition that merely because a party or his counsel has filed a baseless disciplinary complaint or lawsuit against a judge does not require the judge to recuse himself from presiding over cases in which the party or counsel are involved. See Flamm, Judicial Disqualification 21.5, 21.6 (1996), and cases cited therein. See also United States v. Helmsley, 760 F.Supp. 338 (S.D.N.Y. 1991) (counsel's public opposition to judge's elevation to appellate court did not require recusal), aff'd., 963 F.2d 1522 (2d Cir. 1992).

Notwithstanding the above authorities, acting out of an abundance of caution, I conclude that the combined circumstances of (1) Mr. Kamasinski's filing of the JCC complaints against me, (2) his role in the Thayer divorce and the events which followed, (3) my association with the Thayers, and (4) the recency and extraordinary level of publicity focused on the Thayer matter, generally would cause me to recuse myself from any case in which Kamasinski was appearing as either a party or as attorney in fact for a party. For example, if Kamasinski had appeared as plaintiff's attorney in fact at or near the beginning of this case, I would unquestionably have recused myself sua sponte. But at the present stage of this litigation, the recusal question is significantly more complicated. Where, as here, a recusal motion is made at an advanced stage of the litigation, and after the assigned judge has made a number of rulings in the case, the court deciding the motion "must carefully weigh the policy of promoting public confidence in the judiciary against the possibility that those questioning the judge's impartiality might be seeking to avoid the adverse consequences of his presiding over their case." In re Drexel Burnham Lambert, 861 F.2d 1307, 1312 (2d Cir. 1988) (citing In re United States, 666 F.2d 690, 695 (1st Cir. 1981)).

Even in the criminal law context, and even where the putative "counsel" is a member of the bar, a defendant does not have an unqualified right to be represented by counsel of his choice. State v. Mikolyski, 121 N.H. 116, 117 (1981); State v. Linsky, 117 N.H. 866, 880 (1977). It follows a fortiori that no such

unfettered right exists in civil cases, see McCuin v. Texas Power & Light Co., 714 F.2d 1255, 1262-63 (5th Cir. 1983), and that this rule does not change when a party seeks to be represented by a non-lawyer, see State v. Dukette, 127 N.H. 540, 543-44 (1986) (trial court did not err in refusing to allow public defender to withdraw so that defendant could be represented by lay person prohibited by court injunction from engaging in the unauthorized practice of law). In this case, plaintiff's right to be represented by a "citizen of good character," conferred by RSA 311:1 (1995), must be balanced against the need for me to withdraw if Mr. Kamasinski remains in the case, and the consequences that result would have for the effective administration of justice. I find that the scales tip decidedly in favor of a determination that it is Mr. Kamasinski, rather than myself, who must go. The factors which lead me to this conclusion are as follows.

First, although judges obviously have no "vested rights" in the cases assigned to them, the court system as an institution has a strong interest in avoiding the inefficiencies that inevitably occur when a case, particularly one of some complexity such as this one, has to be shifted from one judge to another. I have presided over this case for nearly eighteen months, and am very familiar with the various issues involved. If the case was transferred to another judge, there would be a significant amount of "down time" while he or she became familiar with the file; and -- likewise -- I would encounter the same need to "re-invent the wheel" with respect to whatever case was transferred to me in

exchange for this one. One of the prime reasons for this court's adoption of the individual calendar system was to avoid just this sort of thing.

Second, the timing and circumstances of Mr. Kamasinski's entry into this case strongly suggest that it was a tactical move designed to force my recusal. Plaintiff has made no secret of the fact that she strongly disagrees with certain of the rulings I have made in the case thus far, including particularly those dealing with temporary alimony and with the dismissal of the domestic violence petition. The evidence at the hearing established that, on September 11, 2001, there was a telephone conversation between Attorney Kennedy and defendant's counsel, Attorney Ronald Caron. During this conversation, Kennedy stated, in substance, that the defendant should resolve this case in a hurry on terms acceptable to the plaintiff because, if he did not do so, plaintiff intended to discharge Kennedy and retain Mr. Kamasinski to represent her. Kennedy went on to explain that plaintiff had already spoken to Kamasinski, that Kamasinski indicated he had a conflict with me relating to either a JCC or PCC[7] matter, and that Kamasinski also stated words to the effect that I had "screwed" or taken unfair advantage of my wife in our divorce. The message conveyed through this conversation could not have been more clear: "settle on [plaintiff's] terms, or she will bring in Kamasinski and force Lynn out." When no settlement was

[7] The Professional Conduct Committee.

reached, Mr. Kamasinski entered his appearance the next day, September 12.

A third factor, which also tends to support the thesis that Kamasinski's appearance was a deliberate effort at "judge shopping," is plaintiff's inability to offer any substantial credible reason for terminating Attorney Kennedy's representation.[8] When I made inquiry on this subject,[9] the explanation given was that the primary reason for plaintiff's discharging Kennedy was his unwillingness to raise the issue of defendant's viewing pornography on his computer.[10] Plaintiff

[8] I share the concern expressed by the Fifth Circuit in McCuin that "a litigant's motives for selecting a lawyer [or non-lawyer representative] are not ordinarily subject to judicial scrutiny," and that making such an inquiry "open[s] the door to a host of problems." 714 F.2d at 1265. But as the McCuin court also correctly observed, precluding such inquiry "would permit unscrupulous litigants and lawyers [or lay representatives] to thwart our system of judicial administration. . . . The general rule of law is clear: a lawyer [or lay representative] may not enter a case for the primary purpose of forcing the presiding judge's recusal." Id.

[9] Before making any inquiry of plaintiff, I specifically informed her that she was not required to answer my questions and that if she chose not to do so, I would not hold that against her in any way (although I would then have to make a decision based on the state of the record as it existed without the benefit of her input). I also informed Ms. Holmes that, if she desired to answer my questions but was concerned that she might be prejudiced if the defendant was privy to her answers, I would permit her to respond to my questions in an ex parte setting, and would seal the record so that it would not be available to the defendant. Ms. Holmes chose to respond to my inquiries, and she did not ask that her answers be given in an ex parte setting.

[10] The defendant does not deny that for some period of time before September 1990, while he still resided with plaintiff in the marital home, he subscribed to a pornographic Internet site, but he maintains that he did so solely for his own adult use.

claims that on one occasion, in the spring of 2000, the parties' youngest son Luke (age 7) inadvertently opened a pornographic e-mail on the computer at the marital home. She claims to be concerned that the parties' children could have been exposed to pornography on other occasions, and contends that this has a direct bearing on the defendant's fitness to have shared custody of the children. Yet when I specifically asked whether, aside from this one inadvertent incident, plaintiff had any evidence that the defendant had ever exposed the children to pornography or allowed them to view pornography, she conceded that she did not.[11] While the defendant's interest in pornography could have some legitimate bearing on the matter of child custody -- and while I do not for a moment suggest that plaintiff does not have every right to pursue this issue at trial if she desires -- when the question before the court is the bona fides of plaintiff's decision to substitute Mr. Kamasinski for Attorney Kennedy, it is appropriate to ask whether the disagreements between plaintiff and Kennedy pertain to issues that are apt to play a significant role in the case. Here, the defendant's viewing of pornography does not appear likely to be a key issue at trial. More importantly, even assuming that the pornography issue was as crucial to plaintiff as she now claims, she offers no credible explanation

[11] I note here that the report of Jennifer Elliot, Esq., the guardian ad litem, reflects that she considered the matter of defendant's viewing pornography, but did not consider it something that warranted placing restrictions on defendant's custodial rights.

for her delay in seeking to terminate Attorney Kennedy. By her own admission, plaintiff knew of the pornography on the computer as early as the spring of 2000. If the pornography was of such major concern to her, it is difficult to understand why, when Kennedy refused to pursue the matter, she waited well over a year, until July 2001, before seeking new counsel.

Furthermore -- and again assuming the existence of legitimate disagreements between plaintiff and Attorney Kennedy -- it is important to note that Mr. Kamasinski does not qualify as someone with particular expertise in family law, such that one might naturally expect a person in need of legal assistance in this area to seek him out. There are numerous highly qualified members of the New Hampshire Bar who practice in the area of family law. Instead of selecting one of them, plaintiff instead chose a person whose main qualification appears to be his ability to cause my recusal. Cf. McCuin, 714 F.2d at 1258 (wherein the Fifth Circuit quoted the trial court's finding that a particular lawyer's (the assigned judge's brother-in-law) "primary qualification consists of his ability, up until now, to assist litigants in removing themselves from Judge Justice's purview").

The final -- and perhaps most important -- factor which must be weighed in the balance is the issue of whether Mr. Kamasinski is legally permitted to represent the plaintiff at all. Based on Mr. Kamasinski's own statements on the record at the hearing, it is clear that he is not permitted to do so. Although RSA 311:1 (Supp. 2000) allows a party to be represented by "any citizen of

good character," this provision must be read in conjunction with RSA 311:7 (1995). Bilodeau v. Antal, 123 N.H. 39, 42 (1983). The latter statute provides, "No person shall be permitted commonly to practice as an attorney in court unless he has been admitted by the court and taken the oath prescribed in RSA 311:6." (Emphasis added.) Mr. Kamasinski admitted at the hearing that he appears in court to represent clients in "less than five" cases per year. And while indicating that he earns most of his income from researching and writing (but not signing) appellate briefs for lawyers who pay him for this service, Kamasinski also acknowledged that in the five-or-so cases per year in which he appears in court, he charges his clients for representing them. Plaintiff admits that she is paying Kamasinski for his services in this case.

Mr. Kamasinski does not deny that the services he provides in cases such as this one, where he appears in court on behalf of a client, are for all practical purposes the same (in kind if not in quality) as the legal services that would be provided by a licensed attorney. In cases where he appears as a client's representative, Kamasinski drafts and files pleadings and motions, conducts depositions and discovery, examines and cross-examines witnesses at trial, and makes legal and factual arguments to the court. Mr. Kamasinski takes the position, however, that as long as he does not exceed a certain numerical threshold of cases per year in which he appears, he is not engaged in the common practice of law. Noting that no New Hampshire Supreme Court decision

establishes "how many appearances by lay counsel are too many," Kamasinski asserts that once the supreme court does draw such a line, he will conform his conduct so as not to cross over the line. Mr. Kamasinski misunderstands the limited circumstances under which a non-lawyer may provide legal representation to another person.

Because RSA 311:7 does not further define "commonly," the term must be given its plain and ordinary meaning. See, e.g., Appeal of HCA Parkland Medical Ctr., 143 N.H. 92, 94 (1998). The dictionary defines the word "commonly" as meaning "1. usually, generally, ordinarily; 2. in a common manner." The Random House Dictionary of the English Language p. 413 (2d ed. 1987). It can be seen from this definition that the word "commonly" does not necessarily denote a numerical component (although neither is frequency-of-occurrence wholly irrelevant to the definition). Thus, I may "commonly" or "usually" or "generally" attend the opening game of the Boston Red Sox even though this occurs but once a year. The key concept behind the term "commonly" is the notion that something occurs with a degree of regularity, in the ordinary course of events, and not as an isolated or unusual happening. This construction of the term "commonly" is completely consistent with the supreme court's analysis in Bilodeau. There the court cited approvingly cases from other jurisdictions which had held that statutes similar to RSA 311:1 were intended to allow "only . . . isolated instances of legal representation" by non-lawyers. 123 N.H. at 44. See also State v. Settle, 129 N.H. 171,

180 (1987) (RSA 311:1 "merely provides an opportunity for lay counsel to appear in an individual case. It could not provide a blanket exception allowing lay counsel to file appearances as a matter of course. . . .").

Beyond the fact that Mr. Kamasinski's activities of providing legal representation to clients in up to five court cases per year appears to fit squarely within the accepted definition of something done "commonly," it also is appropriate to consider the legislature's purpose in enacting RSA chapter 311. See Appeal of Ashland Elec. Dept., 141 N.H. 336, 341 (1996) ("while we give undefined language its plain and ordinary meaning, we must keep in mind the intent of the legislation, which is determined by examining the construction of the statute as a whole" (citation and internal quotations omitted)). "There exists, in New Hampshire, a strong public policy against the unauthorized practice of law." State v. Settle, 124 N.H. 832, 835 (1984). This policy is designed to protect both the justice system and the broader public from the harm that can result when a person lacking proper legal training and skills, and not subject to the ethical responsibilities of members of the bar, is entrusted with the power to affect another person's life, liberty, property and other important legal rights. See Settle, 129 N.H. at 177-78.

Given this strong public policy, I conclude that the "citizen of good character" prong of RSA 311:1 permits a non-lawyer to act as counsel for another person only in situations where the representation is truly an isolated and non-recurring event. The

statute was designed primarily to cover the situation, for example, of a person involved in litigation and unable to afford the cost of an attorney, who turns to a trusted friend or colleague for help in negotiating the legal system. It was not designed to cover circumstances, such as those present here, where a person holds himself out as being available to provide legal representation, where he appears in court with some regularity representing different clients,[12] and where he charges for his services. Contrary to Mr. Kamasinski's suggestion, RSA 311:1 provides no safe-harbor for the latter type of activity no matter how small the number of cases per year in which he appears as another person's attorney in fact. In sum, I find that Mr. Kamasinski is engaged in the unauthorized practice of law and that his appearance in this case would violate RSA 311:7.

For the reasons stated above, plaintiff's motion to recuse is denied, and instead Theodore Kamasinski is hereby disqualified from appearing as attorney in fact for the plaintiff in this case.

III.

Since plaintiff indicated at the hearing that her discharge

[12] The fact that Mr. Kamasinski represents a number of different clients is particularly important, because it shows that his situation is clearly distinguishable from the two types of special circumstances which our supreme court has indicated could provide limited exceptions to the prohibition against a lay person commonly practicing law. Both police prosecutors representing the State, see Bilodeau, and the non-lawyer who repeatedly handles small claims actions for his corporate employer, see Settle, 129 N.H. at 179, have only a single "client." That is not the case with Kamasinski.

of Attorney Kennedy would stand even if Mr. Kamasinski was not allowed to represent her, there is no reason not to allow Kennedy's motion to withdraw. Accordingly, that motion is granted.

Although I am loath to continue the trial in light of the events described herein, defendant has conceded that he will not be prejudiced if the trial is continued for a reasonably short period. In addition, based on other motions that are outstanding, it appears that all the recent legal maneuvering has interfered with the parties' ability to complete discovery. The continuance also will give plaintiff a further opportunity to pursue, if she desires, the matter of the pornography. Accordingly, the trial of this case is hereby continued for a period of ninety (90) days. However, within twenty (20) days of the clerk's notice of this order, plaintiff shall either enter a pro se appearance or engage someone to represent her. Should she choose to be represented, plaintiff may select any member of the bar or any lay citizen of good character who is not commonly engaged in the unlicensed practice of law. She may not, however, select a representative whose appearance would require that I recuse myself from this case.

As soon as plaintiff has either appeared pro se or through a representative, the clerk shall schedule this matter for a hearing on all other pending motions, including Attorney Kennedy's motion for instructions. In the meantime, Attorney Kennedy shall maintain possession of the various documents covered by protective

orders, which are the subject of the motion for instructions.

IV.

In addition to his effort to appear as plaintiff's legal representative, Mr. Kamasinski also has filed a petition in his own right as a private citizen for access to all documents and records which have been sealed in this case. Although I can envision circumstances where such a request might be prejudicial to the plaintiff's interests, plaintiff indicated at the hearing that she has no objection to this petition. It is obvious that just because Mr. Kamasinski is disqualified from appearing before me as counsel in this case, his conflict with me cannot preclude him, as a citizen, from petitioning for access to court records pursuant to the procedures set forth in Petition of Keene Sentinel, 136 N.H. 121 (1992). But it also is clear, for the reasons stated previously, that I cannot preside over such a proceeding.

Accordingly, it is hereby ordered that Mr. Kamasinski's petition for access to court records shall be referred to another judge for ruling.[13]

[13] I recognize of course that, in addition to Mr. Kamasinski, the parties in this case also have an interest in the petition for disclosure of the sealed records, and they will have the right to be heard before the judge to whom the petition is referred. This will mean that the parties are forced to appear before two different judges to deal with matters that are related. Although this result is unfortunate, I see no other way to protect the court's institutional integrity while also

BY THE COURT:

October 15, 2001

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ROBERT J. LYNN

(..continued)
accommodating Kamasinski's rights as a citizen.